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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 293

ARMOUR AND COMPANY, A CORPORATION,
Petitioner,

vs.

THE ALTON RAILROAD COMPANY, A CORPORATION, ET AL.,
Respondents.

BRIEF ON BEHALF OF HOLMAN D. PETTIBONE, TRUSTEE OF CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILROAD COMPANY; PATRICK H. JOYCE AND LUTHER M. WALTER, TRUSTEES OF CHICAGO GREAT WESTERN RAILROAD COMPANY; AND NORMAN B. PITCAIRN AND FRANK C. NICODEMUS, JR., RECEIVERS OF WABASH RAILWAY COMPANY, RESPONDENTS, IN OPPOSITION TO PETITION FOR CERTIORARI.

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BRIEF ON BEHALF OF HOLMAN D. PETTIBONE, TRUSTEE OF CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILROAD COMPANY, PATRICK H. JOYCE AND LUTHER M. WALTER, TRUSTEES OF CHICAGO GREAT WESTERN RAILROAD COMPANY, AND NORMAN B. PITCAIRN AND FRANK C. NICODEMUS, JR., RECEIVERS OF WABASH RAILWAY COMPANY, RESPONDENTS, IN OPPOSITION TO PETITION FOR CERTIORARI.

Opinions in Courts Below.

As appears at page 3 of the brief in support of the Petition for Certiorari, the opinion of the District Court herein is reported at 27 Fed. Supp. 625, and the opinion of the Circuit Court of Appeals at 111 Fed. (2) 913.

Statement of the Case.

The Petition for Certiorari and brief in support thereof present this case as being an ordinary suit to recover damages arising out of the misdelivery of livestock. Thus, at page 2 of the Petition it is said that the case involves the jurisdiction of the Federal District Courts to hear and decide an action against a railroad for damage arising from wrongful delivery of property. The statement of facts made at pages 2 to 4 of the Petition is greatly abbreviated, and is calculated to show that Petitioner's Complaint filed in the lower court (R. 4-22) only asked for damages resulting from the misdelivery of livestock belonging to it.

At page 7 of the Petition the issue in the case is similarly stated. In the statement of questions presented, at pages 8 and 9 of the Petition, all of the questions stated relate to a railroad's liability for failing to make delivery of property, and to a court's jurisdiction to hear a suit to recover damages arising therefrom. The brief in support of the Petition proceeds upon the same theory. All this material creates a false conception of the case actually made by Petitioner's Complaint.

This action was brought to recover certain yardage charges paid by Petitioner to the Union Stock Yard and Transit Company of Chicago (hereinafter called the "Stockyard Company") for the use of the facilities and property of the Stockyard Company by Petitioner's livestock consigned to it at the Stock Yards in Chicago. The general circumstances attendant upon the use of those facilities for delivery of livestock are fully set out in the decisions of this Court in *Adams et al.* v. *Mills*, 286 U. S. 397; *A. T. & S. F. Ry. Co. et al.* v. *United States*, 295 U. S. 193; and *Union Stock Yard and Transit Company* v. *United States*, 308 U. S. 213.

The allegations of Petitioner's Complaint may be briefly

stated. For many years Petitioner has owned and operated a meat packing plant adjacent to the Stock Yards in Chicago, which Stock Yards are owned and operated by the Stockyard Company (R. 4). Each of the Respondents herein owns or operates a line of railroad serving the Stock Yards (R. 4, 5). Each Respondent designates Union Stock Yards, Chicago, Illinois as being a station on its or their line of railroad, the station thus designated by each Respondent consisting only of facilities owned by the Stockyard Company at the Stock Yards and used in making deliveries of livestock consigned to parties located there (R. 6).

In the course of its business, Petitioner purchased and shipped to itself at the Stock Yards over the lines of Respondents, numerous shipments of livestock (R. 8, 9) which, upon arrival at the Stock Yards, were then unloaded and delivered to Petitioner (R. 10). In rendering the service, Respondents hauled the cars to the Stock Yards with their own power, and upon arrival the livestock was then unloaded by employees of the Stockyards Company through the use of the facilities owned by the Stockyards Company (R. 8). After unloading, the animals were put into pens of the Stockyards Company or were delivered to Petitioner and removed to its plant (R. 9, 10).

None of the Respondents own any unloading or storage facilities for livestock at the Stock Yards, and all animals consigned to that point were and are required to be unloaded, stored or handled through the use of or over facilities owned by the Stockyard Company (R. 7). The Stock Yards are public stock yards subject to the jurisdiction of the Secretary of Agriculture under the Packers and Stock Yards Act (7 U. S. C. A. Sec. 202) (R. 7) and the Stockyard Company is required to and does file with the Secretary of Agriculture its tariffs showing its charges for all stock yards services performed by it.

For the services performed by it on livestock con-

signed to Petitioner at the Stock Yards, each Respondent collected transportation charges from Petitioner in accordance with its tariffs on file with the Interstate Commerce Commission (hereinafter called the "Commission") or the Illinois Commerce Commission (R. 7). Out of the amounts thus collected Respondents paid to the Stockyard Company its charges for unloading the livestock, the assessment of these charges and their payment by Respondents being authorized by tariffs of the parties on file with the Commission (R. 8).

Under its tariffs on file with the Secretary of Agriculture (R. 11, 35, 36) the Stockyard Company also collected from Petitioner a yardage charge on such livestock (R. 14, 15), the yardage charge being compensation to the Stockyard Company for the use of its facilities and property by such animals after they were unloaded. Thus, Respondents' charges for transportation and the yardage charges of the Stockyard Company were paid by Petitioner, and the charges of the Stockyard Company for unloading the livestock were paid by Respondents. These practices have obtained for many years (R. 6, 8, 10, 11).

In 1933 Petitioner demanded the right to remove its livestock from the Stock Yards without payment of the yardage charges of the Stockyard Company (R. 11, 12) and served notice upon the Stockyard Company and Respondents that it would no longer pay to the Stockyard Company those yardage charges on livestock delivered to Petitioner through the Stock Yards. Upon the refusal of the Stockyard Company to release livestock consigned to Petitioner without payment of such yardage charges (R. 11, 35, 36), Petitioner agreed to pay the charges (R. 15) and thereafter brought this suit in the Circuit Court of Cook County (R. 3) seeking to recover all of the yardage charges which it had thus paid to the Stockyard Company and to secure a mandatory injunction requiring Respondents to make fu-

ture delivery of Petitioner's livestock to it at the Stock Yards without the payment by it of any charge in addition to that provided for in the tariffs of Respondents on file with the Interstate and State Commissions (R. 21).

Petitioner does not claim any physical damage to its livestock or that delivery of such livestock was not made to it at the proper destination. Nor is there any claim that the charges paid by Petitioner were improper in amount or that they were not contained in tariffs on file with the Federal and State Commissions or the Secretary of Agriculture. The claim actually made is that Respondents should have delivered the livestock at the Stock Yards under such circumstances that Petitioner would not have been required to pay the yardage charges of the Stockyard Company (R. 16, 17). This delivery could only have been accomplished through the payment of the yardage charges by Respondent, since delivery of livestock at the Stock Yards can only be made by using facilities of the Stockyard Company in addition to those used in unloading.

All charges of misdelivery and failure to make delivery, contained in the Complaint (R. 10, 13, 14, 15, 16, 17, 18, 22) are based upon the failure of Respondents to pay those yardage charges. Thus, the real questions presented for decision are whether the practices of Respondents in making delivery of the livestock at the Stock Yards were and are unreasonable, and whether the services of the Stockyard Company, for which it collected the yardage charges, were and are a part of the transportation of the livestock.

SUMMARY OF ARGUMENT.

(a) This case does not involve any question of loss of or damage to Petitioner's livestock. For this reason, decisions relating to that subject have no application.

(b) The real issues in the case are the reasonableness of Respondent's present practices with respect to the delivery of livestock at the Stock Yards, and the question of what is included within the transportation and delivery of that livestock. These questions will not be passed upon by a court in the absence of a prior adjudication by the Federal or State commissions.

(c) Even if Petitioner's complaint did not allege a violation of the Interstate Commerce Act, the courts would still not act in this case. The right to proceed herein does not result from a form of words.

(d) The complaint actually does allege a violation of the Interstate Commerce Act, in that the amounts sought to be recovered are said to be due Petitioner because of Respondents' failure to have on file a tariff justifying the collection of the amounts.

(e) Under the facts alleged in the complaint, Respondents could not have made delivery of Petitioner's livestock in accordance with the billing instructions without using the facilities of the Stockyard Company. Petitioner's method of consigning these shipments compelled a use of those facilities, with a consequent obligation to pay the charges of the Stockyard Company.

ARGUMENT.

THE DETERMINATION OF THE ISSUES PRESENTED FOR DECISION REQUIRES A DECISION ON THE REASONABLENESS OF RESPONDENT'S PRESENT PRACTICES, AND A DETERMINATION OF WHAT IS EMBRACED WITHIN THE SERVICE OF TRANSPORTATION AND DELIVERY OF PETITIONER'S LIVESTOCK BY RESPONDENTS. THE EXCLUSIVE PRIMARY JURISDICTION TO DETERMINE THESE QUESTIONS IS VESTED IN THE INTERSTATE COMMERCE COMMISSION AND THE ILLINOIS COMMERCE COMMISSION, AND THIS SUIT CANNOT BE MAINTAINED WITHOUT A SHOWING OF PRIOR RESORT TO THOSE COMMISSIONS.

Following the theory of the Petition, the brief in support of the Petition argues that since courts have primary jurisdiction to determine questions of loss and damage arising out of the misdelivery of or failure to deliver property, this action was properly brought in the courts; that this is demonstrated by the failure of the complaint to allege a violation of the Interstate Commerce Act; and that even if the complaint be held to allege the collection by Respondents of an overcharge, the courts still have jurisdiction. It is further argued that Respondents arbitrarily imposed upon Petitioner the obligation of paying the charges of the Stockyard Company by electing to make a delivery at the Stock Yards, although they could have made the delivery at other points whereby the charge would have been avoided.

(a) In view of the issues actually presented by Petitioner's complaint, it is unnecessary to consider the loss and damage decisions cited in the Petition (pp. 18, 19, 20-22) and supporting brief. For the purpose of this argu-

ment, it might be admitted that the general rule is that when a common carrier receives property for transportation, it has a legal obligation to deliver such property at the proper destination to the proper consignee. For the purpose of this argument, it might also be admitted that generally speaking, suits for loss, damage, injury to or misdelivery of property by common carriers are properly brought in the courts.

But the case made by Petitioner's complaint is not a case of that sort. The theory of the complaint is that Respondents did not fully discharge their duties with respect to the transportation and delivery of Petitioner's livestock in that the livestock were not delivered in such fashion that Petitioner was relieved of the necessity of paying the yardage charges of the Stockyard Company. The decision of this question requires a decision on the reasonableness of Respondent's present practices and a determination of what was included in the transportation and delivery of that livestock. Decisions in suits for loss, damage and misdelivery have no application to these questions.

(b) Generally speaking, the duty of loading and unloading carload freight rests upon a shipper or consignee. The contracts under which Petitioner's livestock were shipped so provided except in cases where the law or Respondent's tariffs provided otherwise (R. 29). But at the Stock Yards the practice has long been otherwise. *A. T. & S. F. R. Co. v. U. S.*, 295 U. S. 193, 198, 199. Prior to 1920, the unloading charge of the Stockyard Company was paid by the railroads voluntarily. Under Section 15(5) of the Interstate Commerce Act (49 U. S. C. A. Sec. 15(5)) the obligation to pay these charges was placed upon the railroads.

There still remained, however, the question whether the transportation obligations of the railroads extended beyond the unloading of inbound shipments of livestock, consigned to public stock yards, and their placement in suitable pens.

The argument over this question led to the decision in *A. T. & S. F. R. Co.* v. *U. S.*, 295 U. S. 193. The Interstate Commerce Act does not define transportation beyond providing, in paragraph 3 of Section 1 (49 U. S. C. A., Sec. 1(3)), that the term transportation shall include locomotives, etc. and all instrumentalities and facilities of shipment, and all services in connection with the receipt, delivery, etc. of property transported. Thus, while delivery is included in the term transportation, the statute does not say what is meant thereby.

It cannot be assumed that the obligation of Respondents to deliver Petitioner's livestock at the Stock Yards included an obligation to give a free delivery of that livestock through the use of the facilities of the Stockyard Company. No provision of the Interstate Commerce act imposes such an obligation upon Respondents, nor is it imposed by their contract of transportation. To determine what was properly included in the transportation and delivery of Petitioner's livestock at the Stock Yards, and whether Respondent's present practices are reasonable, requires a consideration of many intricate facts and circumstances in connection with the handling of the shipments. This determination is committed to the exclusive primary jurisdiction of the Federal and State Commissions.

The rule is that where an inquiry is essentially one of fact or requires consideration of intricate facts of transportation or customs or usage, the courts will not act in the absence of a prior determination by the Commission. In *G. N. Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, the question before this Court was the legal construction of a tariff. This Court held that under the circumstances there present a court would have jurisdiction, but took occasion to say (p. 291) that initial resort to the Commission must be had where it is necessary to determine upon evidence the peculiar meaning of words

or the existence of incidents alleged to be attached by usage to a transaction, this preliminary resort to the Commission being necessary in order to produce the uniformity which it is the purpose of the Interstate Commerce Act to secure. Certainly, the determination of what constitutes a delivery of livestock at the Stock Yards would have to be reached upon "voluminous and conflicting evidence" with respect to "intricate facts of transportation." It has been so held by this Court in *Adams* v. *Mills,* 286 U. S. 397, where the issue was the obligation of consignees of livestock located at the Stock Yards to pay a 25¢ charge for unloading inbound shipments, which charge the railroads had refused to pay. This Court said at page 409:

> "Whether the unloading at the Yards was a part of transportation was not a pure question of law to be determined by merely reaching the tariffs. The decision of the question was dependent upon the determination of certain facts, including the history of the Stock Yards and their relationship to the line haul carriers, the history of the unloading charge of these Yards and the action of the parties is relation thereto."

In *U. S.* v. *American Sheet etc. Co.,* 301 U. S. 402, the industry attacked an order of the Commission requiring the railroads to discontinue free spotting service. The contention of the industry as stated by this Court (p. 404) was that the spotting service was transportation within the Interstate Commerce Act. This Court held (p. 407) that the findings of the Commission constituted an adjudication that the spotting service involved was not transportation service, and further held (p. 408):

> "The Commission is clearly in power to determine what is embraced within the service of transportation and what lies outside that service."

The same conclusion was reached in *Louisville Cement Co.* v. *U. S. et al.,* 19 Fed. Supp. 910, which case involved

the propriety of an order of the Commission condemning the same spotting service. The Court said (p. 916):

> "It is frequently difficult to determine when delivery is completed or transportation begun. It is a question of fact and the Interstate Commerce Commission is peculiarly fitted to determine at what point the carrier has begun or completed straight transportation."

In *Mitchell Coal Co.* v. *Penna. R. Co.*, 230 U. S. 247, the question was where transportation began. This Court held that resort to the Commission was necessary, saying (p. 263):

> "But neither the statute nor the tariff defines what are station limits, nor do they fix the exact point from which the transportation must begin, nor the territory within which the delivery must be made. These limits necessarily vary with the size of the communities, the extent of the yards, the practice of the carriers, and the bounds within which it uniformly receives and delivers freight."

Thus, the questions of the reasonableness of Respondent's practices and what is included in transportation by railroad, which are the exact issues presented in this case, have been definitely held to be within the Commission's primary jurisdiction, and one decision so holding was based upon the facts obtaining at the Stock Yards here involved. The rule with respect to the Commission's exclusive primary jurisdiction has been applied to many phases of carrier activity, such as the reasonableness of rates, car distribution, allowances to shippers, classification of commodities, routing, etc. *T. & P. R. Co.* v. *Abilene etc. Co.*, 204 U. S. 426; *B. & O. R. Co.* v. *Pitcairn Coal Co.*, 215 U. S. 481; *Robinson* v. *B. & O. R. Co.*, 222 U. S. 506; *Mitchell Coal Co.* v. *Penna. R. Co.*, 230 U. S. 246, 256; *Morrisdale Coal Co.* v. *Penna. R. Co.*, 230 U. S. 304, 313; *T. & P. R. Co.* v. *American Tie Co.*, 234 U. S. 138, 146; *Penna. R. Co.* v. *Clark Coal Co.*, 238 U. S. 456, 469;

Loomis v. *Lehigh Valley R. Co.*, 240 U. S. 43, 50; *Northern Pacific R. Co.* v. *Solum*, 247 U. S. 477, 482; *Director General* v. *Viscose Co.*, 254 U. S. 498, 500; *Keogh* v. *C. & N. W. R. Co.*, 260 U. S. 156, 163; *W. & A. R. Co.* v. *Commission*, 267 U. S 493, 497; *Midland Valley R. Co.* v. *Barkley* 276 U. S. 482, 484; *Board* v. *Great Northern R. Co.*, 281 U. S. 412, 420-424; *Standard Oil Co.* v. *U. S.*, 283 U. S 235, 238, 240; *St. L., B. & M. R. Co.* v. *Brownsville District*, 304 U. S. 295; *General etc. Corp.* v. *Eldorado etc Co.*, 308 U. S. 422.

There are no cases holding contrary to those to which we have cited. Petitioner's brief (pp. 14, 15) refers to the *Puritan Coal Mining Co.* case, 237 U. S. 121, the *Littlefield* case, 237 U. S. 140, and the *Mulberry Hill Coal Co* case, 238 U. S. 275, but these cases are not applicable. All of them were referred to and distinguished by this Court in the *Barkley* case, 276 U. S. 482, 486, 487. *Covington Stock Yards* v. *Keith*, 139 U. S. 128, heavily relied upon by Petitioner, is not in point. That case lays down general rules of law with respect to transportation and delivery of property by railroads, but the cause of action arose prior to the effective date of the Interstate Commerce Act. If the case arose under the law now applicable, there can be no doubt that the decision would be in conformity with those we have cited.

The precise issues presented for determination in this case have been submitted to the Commission many times and have been decided by it under varying facts and in connection with deliveries at various public stockyards. Examples of the exercise of the Commission's jurisdiction are the decisions in *Southwestern etc. Co.* v. *Carriers*, 129 I. C. C. 730, 737, 738; *Allied Packers* v. *Carriers*, 14 I. C. C. 377, 382, 161 I. C. C. 641, 645; *Strauss etc. Inc.* v *Carriers*, 153 I. C. C. 609, 188 I. C. C. 487; *E. Kahns Sons Co.* v. *Carriers*, 192 I. C. C. 705, 709, 710, 73 Fed. (2) 948

950, and *Adolf Gobel* v. *Carriers,* 200 I. C. C. 606, 608. In *Hygrade etc. Corp.* v. *Carriers,* 195 I. C. C. 553, the Commission also exercised its primary jurisdiction to determine these issues at the Stock Yards in Chicago, its order being reviewed and reversed by this Court in *A. T. & S. F. R. Co.* v. *U. S.,* 295 U. S. 193.

The Commission's last pronouncement on the situation at the Chicago Stock Yards was made as recently as April 8, 1940, in *Swift & Co. et al.* v. *Alton R. R. Co. et al.,* 238 I. C. C. 179. In that case the Commission held that the transportation of livestock to the Stock Yards ended when the livestock had been unloaded into the unloading pens, and that it had no jurisdiction over the yardage charges of the Stockyard Company. A contrary decision herein would create the very lack of uniformity condemned by this Court. An interesting feature of that case was that Petitioner intervened in support of the complaint therein, stating in its intervening petition that it had instituted the case at bar and that the case involved substantially the same issues as the proceeding before the Commission and prayed for similar relief.

The Illinois rule is the same as that applied by this Court. The Illinois Public Utilities Act (Ill. Rev. Stat. 1937, Ch. 111-2/3) does not prescribe what is included in the transportation and delivery of livestock. The decisions of this Court have been held to be persuasive in determining questions arising under the Illinois law, *Terminal R. R. Assn.* v. *Commission,* 304 Ill. 312, and the rule has been applied in Illinois upon the authority of this Court's decisions. *Medusa, etc. Co.* v. *I. C. R. Co.,* 281 Ill. App. 549.

(c) Petitioner's brief argues that its complaint alleges no violation of the Interstate Commerce Act, and that this circumstance defeats any claim of primary jurisdiction in the Commission. We do not concede the correctness of the claim, but even if the complaint did not contain such an allegation, it would not deprive the Commis-

sion of jurisdiction. In the *Abilene Cotton Oil Co.* case, 204 U. S. 426, the action was for damages for a violation of an alleged common law right (p. 432). In the *Loomis* case, 240 U. S. 43, the action was for damages resulting from the claimed failure of the railroad to perform its common law duty to furnish cars (p. 47). This was also true in the *Barkley* case, 276 U. S. 482, 483, 484. It is certain that the jurisdiction of the Commission cannot be defeated by any form of words.

(d) While Petitioner argues that its complaint contains no allegations of a violation of the Interstate Commerce Act, yet that is the effect of the allegations made. While admitting that all charges paid by it were warranted by tariffs on file with the State or Federal Commissions or with the Secretary of Agriculture, Petitioner still wants Respondents to refund to it all yardage charges which it has paid to the Stockyard Company (R. 21), and to pay the yardage charges of the Stockyard Company on future shipments.

It is claimed that by making deliveries which required Petitioner to pay these charges, Respondents subjected Petitioner to the enforced payment of charges not justified by any tariff of Respondents on file with any Commission (R. 8, 13, 14, 17, 18). This amounts to a claim that Petitioner has been required to pay charges in violation of Section 6(7) of the Interstate Commerce Act.

Nor is this a claim which can be decided by a court from a mere reading of tariffs, as in the *Merchants Elevator Co.* case, 259 U. S. 240. If any court granted Petitioner a recovery, it would be first required to determine the propriety of the yardage charges of the Stockyard Company, since the payment of those yardage charges by Respondents would in effect be an allowance to Petitioner. It would then be required to pass on the propriety of Respondents' charges for the transportation of Petitioner's

livestock to determine if they should be reduced by the amount of the allowance.

So long as they are in effect, the tariffs of Respondents and of the Stockyard Company have the force and effect of statutes, both as to interstate and intrastate traffic. *Penna. R. Co.* v. *International Coal Co.*, 230 U. S. 184; *Atchison & S. F. R. Co.* v. *Commission*, 335 Ill. 70, 85, 86. But the granting of Petitioner's complaint would necessarily require a reduction in Respondent's tariff charges, since the yardage charges of the Stockyard Company must be paid by someone. It is elementary that a court will not undertake such an inquiry with respect to the rates and charges of Respondents and the Stockyard Company.

An effort at recovery somewhat similar to that now being made by Petitioner was made in *Aron* v. *Penna. R. Co.*, 10 Fed. Supp. 756. In that case the plaintiff sought to recover from the railroad amounts which the railroad had paid to certain stock yards for servicing livestock, and which the railroad had then collected from the plaintiff. The claim was that by collecting these charges from the plaintiff after having paid them to the stock yards company, the railroad had collected a charge not included in its tariffs. The Commission had previously held that the service performed by the stock yards company was a part of transportation, and had approved the charge made therefor.

Under these circumstances the court denied the claim (pp. 760, 761) upon the ground that a recovery would require the court to decide "upon a subject which lies within the special jurisdiction of the Commission." This decision was affirmed at 80 Fed. (2) 100, where the Court of Appeals held (p. 101) that the question of whether the services involved were a part of transportation was a question of fact, and (p. 103) that since there had been no finding by the Commission with respect to the plain-

tiff's claimed damage, there could be no recovery in a court of law.

(e) Petitioner endeavors to avoid the application of the cases we have cited by arguing at length that the delivery of its livestock to the unloading facilities of the Stockyard Company was a voluntary act on the part of Respondents; that they could have made other deliveries of the livestock at points within the station known as Union Stock Yards, Illinois, and thus avoided the imposition of yardage charges of the Stockyards Company, and that since they voluntarily elected to make a delivery resulting in the assessment of the charge, Petitioner should not suffer as a result thereof.

Thus, the Petition states that the Stock Yards did not constitute the station, Union Stock Yards, Illinois, to which the livestock was consigned (p. 3); that Petitioner left the selection of the delivery point within the station limits to Respondents (pp. 5, 17), and that the Court of Appeals has held that this election of Respondents deprived the courts of jurisdiction in the case (p. 18). This claim is reiterated at numerous places in the brief, and is elaborated at pages 21 to 32, both inclusive. Upon the basis of this argument, the Petition assigns as a ground for granting the writ a claimed inconsistency between decisions of this Court (pp. 5, 10-15).

In making this argument, Petitioner has misconceived or overlooked the allegations of its complaint. Paragraph 4 of that complaint (R. 6) alleges the publication of rates by Respondents to their station known as Union Stock Yards, Illinois. Paragraph 9 (R. 8, 9) alleges the shipment of the livestock here involved to the station Union Stock Yards, Illinois. Paragraph 3 (R. 5, 6) alleges that as to all livestock shipped to Union Stock Yards, Illinois, Respondents use a common depot or station for unloading and delivering livestock, which station is said to include

the platforms, chutes, pens and other facilities necessary in the delivery of such livestock. Paragraph 4 (R. 6) alleges that the unloading facilities described in paragraph 3 are owned and operated by, and are located on the property of, the Stockyard Company, and that they are the facilities which "have been designated and used by each of the Defendants as their station or depot known as Union Stock Yards in the City of Chicago, Illinois, for the delivery of livestock."

Supplementing these charges are allegations that Respondents have no facilities at Union Stock Yards, Illinois, for the unloading and delivery of livestock other than those of the Stockyard Company (par. 7, R. 7); that Respondents knew they could not complete the transportation of Petitioner's livestock to Union Stock Yards, Illinois, except by using the facilities of the Stockyard Company (par. 19, R. 13), and that Petitioner's only desire is to be permitted to use the facilities of the Stockyard Company at Union Stock Yards, Illinois, without expense (par. 24, 25, R. 16). All this reduces to allegations that all shipments here involved were consigned to a station known as Union Stock Yards, Illinois; that that station consisted of nothing but the unloading platforms and other facilities owned and operated by the Stockyard Company and through the use of which livestock was unloaded and delivered; and that there were no other facilities within the limits of that station which could be used in unloading and delivering the shipments.

The complaint contains no suggestion that Respondents could have delivered Petitioner's livestock at Union Stock Yards, Illinois, in any other manner than by using the facilities of the Stockyard Company. It results that by billing its livestock to Union Stock Yards, Illinois, Petitioner compelled a use of facilities of the Stockyard Company and a payment of its charges. And Petitioner was

fully aware of the fact, as the practice had been in effect for many years (R. 6, 8, 10, 11). The claimed inconsistency between the decisions of this Court is fanciful. See *U. S. Y. & T. Co.* v. *U. S.*, 308 U. S. 213, 219.

Conclusion.

The Petition and brief in support thereof contain various criticisms of the decision of the Court of Appeals, to which we have made no answer, since we submit that no importance should be attached to these criticisms, even if they were well-founded. Under the law, the decisions of the District Court and the Court of Appeals were correct for the reasons which we have assigned, and since a correct conclusion has been reached, the methods by which those courts may have reached that conclusion are of no consequence. *Dinsmore* v. *Southern Express Co.*, 183 U. S. 115, 121; *Camp* v. *Gress*, 250 U. S. 308, 317; *Y. & M. V. R. Co.* v. *Mullins*, 249 U. S. 531, 532.

For the reasons assigned in the opinion of the Court of Appeals (R. 85), this is not a case which should remain pending in court under the holding of this Court in *General American Tank Car Corp.* v. *Eldorado Terminal Co.*, 308 U. S. 422. We submit that the Petition for Certiorari should be denied.

Respectfully submitted,

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